IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

| PUBLIC HEALTH EQUIPMENT & | § | |
|----------------------------|----------|-----------------------|
| SUPPLY CO., INC., | § | |
| | § | |
| Plaintiff, | § | |
| v. | § | CIVIL ACTION NO. |
| | § | |
| CLARKE MOSQUITO CONTROL | § | SA-08-CV-0895 OG (NN) |
| PRODUCTS, INC., | § | |
| CLARKE ENVIRONMENTAL | § | |
| MOSQUITO MANAGEMENT, INC., | § | |
| CLARKE ENGINEERING | § | |
| TECHNOLOGIES, INC., | § | |
| • | § | |
| Defendants. | § | |

ORDER GRANTING MOTION FOR MODIFICATION OF DEADLINES (DOCKET ENTRY 87)

The matter before the Court is the opposed motion to modify remaining scheduling order deadlines (Docket entry 87). A hearing on the matter was held on August 16, 2011.

Defendants argue that despite their best efforts, the press of other cases including an extended trial in the United States Bankruptcy Court and an appellate briefing commitment involving a voluminous trial record, as well as the nature of the claims and evidence in this case, necessitates additional time to prepare this case for trial and expansion of deadlines. Plaintiff opposes any extensions, complaining that defendants could have conducted discovery earlier and should not be rewarded for their dilatory conduct. Plaintiff insists that any extensions which the Court might allow not affect the current December 12, 2011 trial date.

Having considered the parties' briefing on this motion and their arguments during the hearing, I conclude that there is good cause for modifying and extending the remaining deadlines.

Defendants' motion is timely filed and they have adequately explained why they cannot complete

discovery before October 3. While the Court agrees that defendants could have moved more

promptly to assemble documents, assess the materiality of witnesses, identified translators, etc.,

the Court cannot conclude that the delay is either intentional or unduly prejudicial to plaintiff.

The attorneys for both parties are clearly busy and their prior involvement in their clients'

business disputes justifies their continued involvement, despite the fact that some delay in the

progress of this litigation has resulted.

Additionally, it is highly unlikely that the Court will be available to try this case starting

on December 12 because of commitments in other civil cases, as well as the criminal docket.

Because it is unlikely that the Court will be able to try this case in December, an extension of the

remaining pretrial deadlines does not unduly prejudice plaintiff.

Accordingly, the motion to modify deadlines is ORDERED GRANTED as follows:

1. Defendant's expert witness deadline extended to September 23, 2011

2. Discovery deadline extended to November 15, 2011

3. Dispositive motion deadline extended until December 15, 2011

4. Jury selection and trial is reset to March 26, 2012 at 9:30 a.m., before the

Honorable Orlando L. Garcia, Courtroom 1, First Floor, John H. Wood, Jr. United

States Courthouse, 655 East Durango Boulevard, San Antonio, Texas 78206.

No further motions for extensions of deadlines will be entertained absent exceptional

circumstances.

SIGNED on August 17, 2011.

NANCY STEIN NOWAK

UNITED STATES MAGISTRATE JUDGE

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